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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,861	01/09/2002	Frank Peters	Mohawk 5	5321

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EXAMINER

EINSMANN, MARGARET V

ART UNIT PAPER NUMBER

1751

DATE MAILED: 09/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/042,861

Applicant(s)

PETERS ET AL.

Examiner

Margaret Einsmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6,7, 10-12 rejected under 35 U.S.C. 102(b) as being anticipated by Cordick et al., WO 00/03752.

Cordick et al. teach a process of treating carpet fibers with a bacteria spore blend to prevent odor. See figure (1B) and page 5 lines 31-35. Noting example 1 on pages 14 and 15, patentee is treating carpet fibers with the same spore blend as applicant discloses on page 8, in an aqueous solution of a fluorochemical, which is applied from an aerosol container and then dried in a humidity control zone. The examiner takes official notice that lower hydrocarbons are conventionally used as propellants for aerosol containers. Accordingly the limitations of claims 1-4, 6,10,12 are disclosed. Regarding the limitation of claim 7, the fluorochemical component is contained in the solution in an amount of 0.1 to 20 wt%. See col 10 lines 23-38. Regarding claim 11, patentee states at page 13 line 19 et seq. that the agent may be applied to installed carpet, which, of course, has already been dyed. Regarding the limitation of pH as claimed, that is inherent since patentee is using the exact same composition as applicant, and has not added any acid or base, making the composition essentially neutral.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5,8,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cordick et al. Cordick et al. is relied upon as in the above rejection as teaching a process of treating carpet fibers with a bacteria spore blend to prevent odor. However, Cordick does not state the quantity of spore blend on the carpet or the wet add on amount of the odor treatment solution. Patentee describes the treatment amount as spores per gram of carpet, and does not describe the amount of fluorochemical in terms of odor treatment solution. It would have been obvious to the person having skill in the art that the amount of composition patentee applies is equivalent for its intended purpose, which is the same as applicant's purpose, since his results indicate that the application of the spore blend in the amounts patentee uses are sufficient to provide removal of potentially odor causing organic material, which is equivalent to the process applicant claims, absent evidence to the contrary. Additionally applicant states at page 9 lines 17-21 that the most effective amount is  $10^7$  cells per gram of fiber weight, which is the same amount as claimed by patentee in claim 16, giving more evidence that the processes are equivalent.

***Claim Objections***

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Claim 8 objected to because of the following informalities: On line 1, "order" should be changed to "odor." Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In this claim, what is the "wet add on" amount based on?

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 7 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the fluorochemical component of the odor treatment solution being in an amount of 1.25% to 4.0% fluorine, does not reasonably provide enablement for the fluorochemical component to be in the range of 1.25 to 4% of the treatment composition. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the

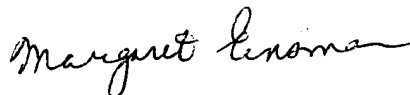
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invention commensurate in scope with these claims. See page 13 second paragraph where the amount of the fluorochemical is defined in terms of the amount of fluorine..

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 703-308-3826. The examiner can normally be reached on 7:00 AM -4:30 PM M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 703-308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Margaret Einsmann  
Primary Examiner  
Art Unit 1751

August 22, 2003